

Columbia Manufacturing Corporation, Petitioner.
Case 21-CA-19581

June 4, 1982

**ORDER DENYING MOTION FOR
RULEMAKING**

Pursuant to the Equal Access to Justice Act, P.L. 96-481, 94 Stat. 2325 (1980), and Sections 102.124 and 102.146 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, Columbia Manufacturing Corporation, herein called the Petitioner, filed a petition on November 23, 1981, to increase fees payable to agents and attorneys from \$75 per hour to \$145 per hour.

The petition alleges in pertinent part that the \$75 per hour statutory fee should be increased to a maximum of \$145 per hour to permit the Petitioner to recover the actual fees charged by its attorneys. The Petitioner contends that the fees of its attorneys are reasonable considering the prevailing rate for similar services in the community in which the attorneys ordinarily perform services. The Petitioner cites as special factors warranting an increase in the statutory fee the conduct of the General Counsel and Union in allegedly, knowingly, presenting perjured testimony and fraudulent evidence against the Petitioner in the unfair labor practice proceeding before the Board.

The Equal Access to Justice Act was enacted on October 21, 1980, with an effective date of October 1, 1981, the same effective date as the pertinent Board rules. The Act and the Board's rules permit

eligible parties that prevail in litigation before the Agency and over the Agency in Federal court, in certain circumstances, to recover litigation fees and expenses from the Agency. The Act, Section 5 U.S.C. § 504(b)(1)(A), provides that "attorney or agent fees shall not be awarded in excess of \$75.00 per hour, unless the Agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee." Section 102.145 of the Board's rules limits recoverable fees to \$75 per hour and Section 102.146 provides that any petitions to increase fees should state why higher fees are warranted by an increase in the cost of living or a special factor such as the limited availability of qualified attorneys or agents for the proceedings involved. Neither the statute nor the applicable Board rules indicate that the prevailing rate or alleged improper agency action may constitute justification for increasing agent and attorney fees. Accordingly, and as there appears to be no change in circumstances since the Equal Access to Justice Act and applicable Board rules became effective, the Board finds that rulemaking to increase the agent and attorney fees is unwarranted at this time.

It is hereby ordered that the petition requesting the Board to engage in rulemaking for the purpose of raising agent or attorney fees recoverable pursuant to the Equal Access to Justice Act and Section 102.145 of the Board's rules from \$75 per hour to a maximum of \$145 per hour is denied.